The Case for Documentation

For Any Wall and Ceiling Contractor to Obtain Payment For Change Order Work the Need for Full Documentation is Essential

Unless the price of the change can be agreed upon in advance, the contractor must preserve the evidence of facts as to the costs and details of the performance of the changed work. Under the cost-plus method or under the disputes clause, for a contractor to be successful in obtaining full compensation for the original contract work as well as the changed work, the contractor must be able to prove his costs. The best evidence of expenses is a complete set of invoices, purchase orders, receipts and accurate records of wages paid to employees.

Also very helpful in presenting a successful claim for extra compensation for changed work is the existence of a jobsite log in which the job superintendent records anything and everything that may be considered extra work. If a jobsite log is maintained and reviewed daily, the contractor will always be aware of conditions that require quick action, such as directives issued to the job superintendent from a representative of the owner, jobsite delays, or changing site conditions.

It is important that every occurrence which might be extra work be documented because there is an inference that circumstances not included in the jobsite log did not occur.

Jobsite logs should be maintained daily by the job superintendent either on a handwritten form or dictated to be transcribed. A jobsite log may be in outline form to aid the job superintendent in making a record of all the important events of each day. It is a good policy to have the daily entries in the jobsite log forwarded to the main office of the contractor daily or weekly in order that the main office can follow the progress of the job and be assured that the jobsite log is being kept up to date.

Notes or memoranda should be kept of oral and telephone conversations. The content of each contract contact with representatives of the owner or other contractors should be noted. Then, as soon as possible, these notes should be translated into written memoranda for the file or a confirming letter to the other party to the conversation. The confirming letters have the dual purpose of implying agreement by the other if he remains silent after receipt of the confirming letter, and also preserving a written record.

In addition to the job log, photographs showing the nature and location of the changed work should also be made part of the file. Photographs can be the ultimate help in documenting the exact factual situation and may even furnish details previously unnoticed or not noted elsewhere. An instant-development type camera is useful, so that additional photographic pictures can be taken before the site conditions are altered, if for any reason the initial photographs do not clearly depict what needs to be shown.

Depending on the magnitude and complexity of the claim, experts may be needed to reproduce expert opinions, analyses, and reports on the subject matter of the change. An expert can serve the dual purpose of supporting the claim and advising the contractor on the specifics of the claim.

The contractor should not formulate his claim and then hire an expert at the last moment before presenting the claim. Rather, calling in an expert should be among the first steps, when it becomes clear that a substantial claim for extras may exist.

Also relevant in presenting a claim is evidence of the customs and practices of the trade of a particular contracting field. These customs or trade practices amplify plans and specifications and are implicitly incorporated into a contract provided they are not contrary to the expressed provisions of the contract. In addition to “fleshing out” the terms of the plans and specifications, proof of customs and trade practices may be an absolute necessity when questions arise about the standard of workmanship.

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